

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF PUERTO RICO**

IN RE:

SHEIDA RIVERA SIVERIO

Debtor

MIGUELINA DELGADO RODRIGUEZ

Plaintiff

V.

SHEIDA RIVERA SIVERIO

Debtor/Defendant

CASE NO. 13-06438 (MCF)

Chapter 7

ADV. PROC. NO. 13-00218 (MCF)

MOTION TO DISMISS

TO THE HONORABLE COURT:

COMES NOW, Sheida Rivera Siverio, through the undersigned attorney and respectfully states and prays as follows:

1. Debtor filed for bankruptcy under Chapter 7 on August 6, 2013.
2. On October 29, 2013, Plaintiff Miguelina Delgado Rodriguez filed an Adversary Proceeding, entitled *Complaint to Determine Dischargeability of a Particular Debt*. **Docket 12.**
3. Plaintiff is an unsecured creditor of Defendant's Chapter 7 bankruptcy petition. Plaintiff alleges in the above mentioned adversary proceeding that Defendant's debt is non dischargeable since it was willful and

malicious. Moreover, Plaintiffs alleges the Defendant's willful and malicious acts caused damage to Plaintiff's property. The damage that Plaintiff alleges suffered was due to the sale of a property. The willful and malicious injury that Plaintiff alleges defendant caused was not a personal injury to an individual or the death to an individual. See Section 1328 (a) (4).

4. On March 18, 2014, Defendant converted the Chapter 7 to Chapter 13 under 11 U.S.C. 706 (a). **Dockets 16, 17 and 18.**
5. The Bankruptcy Code is intended to provide a fresh start for those persons who are inundated in monetary debt. See *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1933). Congress decided that persons, who attempt to reorganize, may discharge a debt that is otherwise nondischargeable in liquidation. 11 U.S.C. Sec. 1328; see *In re McAloon*, 44 B.R. 831, 835 (Bankr.E.D.Va.1984). It is well known that if a debtor complies with all his or her plan payments, he or she can be discharged from debts arising from willful and malicious conduct pursuant to Section 523(a)(6), since the same is not a stated exception. See *In Re: Cintron*, 447 B.R. 82 (2011). Debts arising from willful and malicious injury can be determined to be nondischargeable in Chapter 7 but are fully dischargeable in Chapter 13. See *In re: Myrvang v. Graves*, 232 F.3d 1116 (9th Cir. 2000).

6. Defendant will be repaying a greater portion of Plaintiff's debt under Chapter 13 than would result from a liquidation proceeding under Chapter 7.
7. For the above mentioned, Defendant request this Honorable Court to enter an Order dismissing the abovementioned adversary proceeding and set aside the February 14, 2014 Court's Order, see **Docket 24**.

WHEREFORE, Sheida Rivera Siverio, respectfully requests, from this Honorable Court to enter an Order dismissing the present adversary proceeding, with any further relief as is deemed appropriate in the circumstances.

30 DAY NOTICE TO ALL CREDITORS AND PARTIES IN INTEREST: You are hereby notified that you have thirty (30) days from the date of this notice to file an opposition to the foregoing motion and to request a hearing. If no opposition is filed within the prescribed period of time, the Motion to Dismiss will be deemed unopposed and may be granted without further hearing unless (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interest of justice requires otherwise. If a timely opposition is filed, the Court will schedule a hearing as a contested matter.

CERTIFICATE OF SERVICE: I hereby certify that on this same date, I electronically filed the foregoing with the Clerk of the Bankruptcy Court using the CM/ECF system which will send notification to all CM/ECF

participating parties. I also certify that I have served the same by regular mail to all the creditors listed in record.

RESPECTFULLY SUBMITTED, this 18 day of March, 2014, in San Juan, Puerto Rico.

S/ **Armando Lamourt-Rodriguez**
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